

Fiscal Impact Analysis
Permanent Rule Amendment without Substantial Economic Impact

Rulemaking Authority Proposing Rule Change:

North Carolina Medical Care Commission

Agency Contact Persons

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Impact Summary

Federal Government: No
State Government: Yes, minimal
Local Government: No
Private Entities: Yes, minimal
Substantial Impact: No

N.C. Administrative Code Citations and Titles of Rule Change

**See proposed text in the Appendix*

10A NCAC 13A .0201 Petitions (Amendment)

Authorizing Statutes

N.C. G.S. 143B-165

N.C. G.S. 150B-20

Background and Rationale for Rule Amendment

The rulemaking procedures in Subchapter 10A NCAC 13A apply to the rulemaking authority of the North Carolina Medical Care Commission (Commission) granted by G.S. 143B-165. Rules are required in the N.C. Administrative Code pursuant to G.S. 150B-20 for the procedure for submitting a rule petition to an Agency and the procedure an Agency follows in considering a rulemaking petition. There are 1717 rules the Division of Health Service Regulation (DHSR) has jurisdiction over in the N.C. Administrative Code. Of that number, the Commission has rulemaking authority for 736 rules. The remaining 981 rules are under the rulemaking authority of the Director, DHSR through Directive II-24 from the Department of Health and Human Services, the N.C. Radiation Protection Commission, the N.C. Social Services Commission, and the N.C. Mental Health Commission.

As discussed in the fiscal analysis, this rule is proposed for amendment to provide clarity, remove ambiguity, remove language restating statute, and make technical changes to the text.

Rules Summary

Rule .0201 – Petitions

The Agency is proposing to amend this rule to revise, update and clarify the procedure for the requirements for a rule petition submission and for rule petition approval by the Commission. The rule has been reorganized to identify items the petitioner may include in the petition but are not required to submit. The requirement for the timeframe of rendering of a final decision by the Commission Chairman of a petition submission was removed because it is governed by statute in G.S. 150B-20. In addition, other language restating the requirements in G.S. 150B-20 has been removed. By clarifying the requirements for rule petition submission and rule petition approval in the proposed rule, it removes the ambiguity in the rule for the submission of rule petitions to the Office of the Director, DHSR for rulemaking by the Commission.

Fiscal Impact to State Government and the Regulated Community

The proposed rule is clarifying the process for Medical Care Commission rulemaking petitions. The factors listed in the proposed rule have been used in consideration of rule petition approvals and are not new in the determination used to grant a rule petition. As such, there will be no change to the quality of review or the outcome of petitions.

In the last five years (10/1/18 -10/1/22), there have been two rule petitions submitted to DHSR for the rulemaking authority of the Commission, both of them submitted in the year 2022. In clarifying the requirements for petition submission in the proposed rule amendment, no additional requirements were added for the petitioner to address. Of the optional items listed in the rule, it is up to the discretion of the petitioner to include any or all the items listed the submitted petition for Commission consideration. Clarifying the determination factors for granting the petition enables a fair and equitable process for the Commission to consider petitions submitted. Petitioners and Commissioners may receive an incremental benefit in the form of time savings from the petition submission requirements being easier to understand.

The proposed rule shifts the responsibility for a petition determination from solely that of the Commission Chair to that of the entire Commission. In theory, this change has the potential to make the petition process more burdensome in that it requires a determination from the full Commission rather than just the Chair. It could also produce a benefit in that it will enable more transparency and diverse input from Commission members. However, costs and benefits associated with this change would be realized only if the Chair discontinues the current practice of deferring petition determinations to the entire Commission. This appears to be a discretionary outcome; as such, these potential costs and benefits may not be realized.

There will be no change in the amount of time for a petition determination by the Commission because according to G.S. 150B-20, a decision must be made within 120 days of receipt of a petition. The Commission holds regularly scheduled quarterly meetings, and as business needs arise, may hold special meetings in between the quarterly meetings. In the last five years, the petition determination decisions have been accommodated on the Commission meeting agendas for one regularly scheduled quarterly meeting and one special Commission meeting.

Impact Summary

As measured from the baseline conditions, there are no quantifiable economic costs or benefits associated with the proposed rule amendments. The amendments are for the purpose of providing clarity and consistency with Statute. While these amendments will not result in a change to the

baseline regulatory condition, they could have a positive economic impact to the regulated community and the State agency in terms of time savings. These impacts are expected to be negligible. The amendments could also result in a potential cost to the Commission, but such a cost would be realized only if the Commission Chair discontinues the current practice of deferring petition determinations to the full Commission. This appears to be a discretionary outcome; as such, this potential cost may not be realized.

Appendix: Proposed Rule Text

10A NCAC 13A .0201 is proposed for amendment as follows:

SECTION .0200 - RULEMAKING

10A NCAC 13A .0201 PETITIONS

(a) Any person wishing to submit a petition requesting the adoption, ~~amendment~~ amendment, or repeal of a rule by the North Carolina Medical Care Commission shall ~~address~~ submit the petition addressed to Office of the Director, Division of Health Service Regulation, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701.

(b) The petition shall contain the following information:

- (1) ~~either a draft of the text of the proposed rule or a summary of its contents~~ rule(s) for adoption or amendment and the statutory authority for the agency to promulgate the ~~rule~~; rule(s);
- ~~(2) reason for proposal;~~
- ~~(3)~~(2) a statement of the effect on existing rules or orders;
- ~~(4) any data supporting the proposal;~~
- ~~(5)~~(3) a statement of the effect of the proposed rule rule(s) on existing practices in the area involved, including cost factors, if known; and
- ~~(6) names of those most likely to be affected by the proposed rule, with addresses, if known;~~
- ~~(7)~~(4) the name(s) and address(es) of petitioner(s).

(c) The petitioner may include the following information within the request:

- (1) documents and any data supporting the petition;
- (2) a statement of the reasons for adoption of the proposed rule(s), amendment or the repeal of an existing rule(s);
- (3) a statement explaining the costs and computation of the cost factors, if known; and
- (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s).

~~(e)~~(d) The ~~Chairman of the North Carolina Medical Care Commission will determine, Commission,~~ Commission, based on a study review of the facts stated in the petition, ~~whether the public interest will be served by granting the petition. He will consider all the contents of the submitted petition, plus any additional information he deems relevant. shall consider~~ the following in the determination to grant the petition:

- (1) whether the North Carolina Medical Care Commission has authority to adopt the rule(s);
- (2) the effect of the proposed rule(s) on existing rules, programs and practices;
- (3) probable costs and cost factors of the proposed rule(s);
- (4) the impact of the rule on the public and the regulated entities; and
- (5) whether the public interest will be served by granting the petition.

~~(d) Within 30 days of submission of the petition, the Chairman will render a final decision. If the decision is to deny the petition, the Chairman will notify the petitioner in writing, stating the reasons for the denial. If the decision is to approve the petition, the Chairman will initiate a rulemaking proceeding by issuing a rulemaking notice, as provided in these rules.~~

(e) Petitions that do not contain the information required by Paragraph (b) of this Rule shall be returned to the petitioner by the Chairman of the North Carolina Medical Care Commission.

*History Note: Authority G.S. 143B-165; 150B-20;
Eff. February 1, 1976;
Readopted Eff. December 19, 1977;
Amended Eff. November 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 22,
~~2015.~~ 2015;
Amended Eff. October 1, 2023.*